

REMARKS

Receipt of the Office Action of December 14, 2005 is gratefully acknowledged.

The objection to claims 28, 33, 36, 37 and 38 as informal is noted. In reply thereto, claims 28, 33, 36, 37 and 38 have been amended to depend them from claim 25 thereby overcoming this objection.

The rejection of claims 11, 12, 18, 21, 23, 25, 34 - 37, 40, 42, 43 and 45 as anticipated by Reading et al under 35 USC 102(a), and the rejection of claims 20, 24, 38 and 44 as unpatentable under 35 USC 103(a) by Reading et al are noted and respectfully traversed.

Regarding the rejections, FOUR points need be considered:

(1)

Incorporation by reference is permitted pursuant to 37 CFR 1.57. The purpose of incorporation by reference, however, is to insure completeness under 35 USC 112. See ***General Electric Co. v. Brenner, Comr. Pats.***, 159 USPQ 335 (Ct. Appl D.C, 1968). Incorporation by reference, therefore, is properly related to the application and resulting patent which issues from the application, and not to the resulting patent as a reference under 35 USC 102 or 103. Accordingly, carrying U.S. patent 6,085,582 forward through publication US 2002/0026822 for the purpose of applying 35 USC 102 is not proper.

(2)

Applying incorporation by reference is prohibited when if the document incorporated by reference does not itself incorporate by reference (37 CFR 1.57 (c)). In this case, the examiner refers to the flow meter 36 and the analyzer 28 of the '582 patent as being incorporated by reference, but the '582 patent also incorporates by reference the analyzer 28. A double incorporation by reference is not permitted, as noted above.

(3)

Assuming for argument sake that the incorporation is proper, it still does not anticipate claims 11, 12, 18, 21, 23, 25, 34 - 37, 40, 42, 43 and 45 because when one reads '822 at page 4f [0035] one can only conclude that the combination of analyzer system 10 with a mass flowmeter 36 of '582 yields a system like that shown in the Enclosure A hereto, which is not the present invention. And moreover, in col.6, beginning in line 46, '582 discloses using a flowmeter from J-TEC Associates. The J-TEC Associates flowmeter, shown in Enclosure B hereto, would not be compatible with the analyzer system 10. In any event, '822 is absolutely silent about any rigid mechanical connections between analyzer system 10 and any external systems, e.g., mass flowmeter 36, etc., which would submit the external system to vibrations generated in or transmitted via analyzer system 10. Also, '822 does not disclose an electronic case which is subject to vibrations generated in or transmitted via a sensor, and which would lead to cross-talk back to the sensor, as disclosed in the present application on pages 3 and 4. Moreover, '822 discloses a housing which surrounds a plurality of sensors and which is provided with vibration absorption to prevent the vessels and the sensors inside from external vibrations generated by the vehicle. Rather than anticipate the present invention, it is respectfully submitted that '822 teaches away from the present invention because the dampers 32 outside the housing may consist in avoiding any vibrations of the sensors inside.

(4)

The examiner has made certain assumptions in combining '822 and '582 which cannot be justified. For example, the examiner states that the flowmeter 36 of '582 is "mounted in a wall of a vessel..." This conclusion cannot be substantiated from anything disclosed in '582. The flowmeter 36 is disclosed as being "positioned in dilute mixture duct 22." How it is "positioned" is not disclosed. The housing 20 of '822 is stated as being "rigidly coupled to the sensor.....flow meter 36.." There is no such disclosure. The application of a reference must be based on disclosure and not assumptions so that the noted rejections must fail.

U.S. Patent Appl. 10/693,606

The examiner's indication that claims 13 - 17, 19, 22, 26 - 33, 39 and 41 contain allowable subject matter is sincerely appreciated. However, in view of the above, these claims have been retained in their present form.

In view of the foregoing, reconsideration and re-examination are again respectfully requested and claims 11 - 45 found allowable.

Respectfully submitted,

BACON & THOMAS, PLLC



Felix J. D'Ambrosio
Attorney for Applicant

Registration Number 25,721

Date: March 14, 2006

Customer Number *23364*

BACON & THOMAS, PLLC

625 Slaters Lane, Fourth Floor

Alexandria, Virginia 22314

Telephone: (703) 683-0500

Facsimile: (703) 683-1080

S:\Producer\fjd\CLIENTS\Endress + Hauser Holding GmbH\DRAH3008-FL0172\March 14 2006 response.wpd